

10/544089

Response to the Office Action dated July 7, 2009

**REMARKS**

Favorable reconsideration of this application is requested in view of the above amendments and the following remarks.

Claims 1, 4-5, 7-10, 12, 13, 15-18, 20 and 22-24 have been amended editorially. In addition, claim 1 has been amended to include the features of 2, 3 and 6. Claims 2, 3, 6, 11, 14, 19, 21 and 25 have been canceled without prejudice or disclaimer. Applicants retain the right to present claims 2, 3, 6, 11, 14, 19, 21 and 25 in a continuing application. Claim 26-29 have been canceled without prejudice or disclaimer. Applicants retain the right to present claims 26-29 in a divisional application.

**Claim Objections**

Claim 21 is objected to due to informalities. The objection to claim 21 is moot in view of the cancellation of the claim.

**35 USC § 112 Rejections**

Claims 1-25 are rejected under 35 USC 112, second paragraph, for indefiniteness. The rejection of claims 2, 3, 6, 11, 14, 19, 21 and 25 is moot in view of the cancellation of the claims. Claim 1 has been amended editorially to clarify the test tool as an analytical testing element. Claims 4-5, 7-10, 12, 15-18, 20 and 22-24 have been amended editorially to conform with current U.S. practice. Applicants respectfully request that the rejection be withdrawn.

**Drawing Objections**

The drawings are objected to for the reasons noted in the office action. The claimed movable member, now in amended claim 1, is shown, for example, in FIGs. 1 to 6D as reference number 17, in FIGs. 7A and 7B as reference number 17' and FIGs. 8A to 10B as reference number 17. Applicants respectfully request that the objection be withdrawn.

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35 USC § 102 Rejections

Claims 1-5 and 20 are rejected under 35 USC 102(b) as being anticipated by Blümel et al. (US 4279514). Original claim 6 was not rejected as being anticipated by Blümel. Therefore, claim 1, which includes the features of claim 6, is not anticipated by Blümel and the rejection should be withdrawn. The rejection of claims 2 and 3 is moot in view of cancellation of the claims. Claims 4, 5 and 20 are allowable at least by virtue of their dependence on independent claim 1. The rejection of these dependent claims should be withdrawn. Applicants do not concede the correctness of the rejection.

Claims 1-25 are rejected under 35 USC 102(b) as being anticipated by Bonner et al. (US 5510266). Applicants respectfully traverse the rejection.

Claim 1 is directed to an analytical testing feeder device comprising a movable member attached to the storage portion where the movable member is configured to lift the analytical testing elements stored in the storage space.

Bonner discloses a pivot rod 28 that the rejection erroneously equated to the movable member of claim 1. The pivot rod 28 is inserted so that it lodges in the central opening 54 of the sensor magazine 26 such that the sensor magazine will rotate (col. 7, lines 36-40). However, the pivot rod 28 of Bonner is not configured to lift any analytical testing elements away from a transporting member as in claim 1. Therefore, Bonner does not anticipate, teach or suggest the features of claim 1 and the rejection should be withdrawn.

The rejection of claims 2, 3, 6, 11, 14, 19, 21 and 25 is moot in view of the cancellation of the claims. Claims 4, 5, 7-10, 12, 13, 15-18, 20, and 22-24 are allowable at least by virtue of their dependence on independent claim 1 or intervening dependent claims. The rejection of these dependent claims should be withdrawn. Applicants do not concede the relevance of the reference to the dependent claims.

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Applicants respectfully request that a timely Notice of Allowance be issued in this case.

If the Examiner believes a telephone conference would advance the prosecution of this application, the Examiner is invited to telephone the undersigned at the below-listed telephone number.

Dated: December 7, 2009

Respectfully submitted,

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